

LIMITED EXEMPTION FOR CANADIAN MINISTERS FROM
CERTAIN SELF-EMPLOYMENT TAX LIABILITY

Section 306 of Pub. L. 103-296 provided that:

“(a) IN GENERAL.—Notwithstanding any other provision of law, if—

“(1) an individual performed services described in section 1402(c)(4) of the Internal Revenue Code of 1986 which are subject to tax under section 1401 of such Code,

“(2) such services were performed in Canada at a time when no agreement between the United States and Canada pursuant to section 233 of the Social Security Act [42 U.S.C. 433] was in effect, and

“(3) such individual was required to pay contributions on the earnings from such services under the social insurance system of Canada,

then such individual may file a certificate under this section in such form and manner, and with such official, as may be prescribed in regulations issued under chapter 2 of such Code. Upon the filing of such certificate, notwithstanding any judgment which has been entered to the contrary, such individual shall be exempt from payment of such tax with respect to services described in paragraphs (1) and (2) and from any penalties or interest for failure to pay such tax or to file a self-employment tax return as required under section 6017 of such Code.

“(b) PERIOD FOR FILING.—A certificate referred to in subsection (a) may be filed only during the 180-day period commencing with the date on which the regulations referred to in subsection (a) are issued.

“(c) TAXABLE YEARS AFFECTED BY CERTIFICATE.—A certificate referred to in subsection (a) shall be effective for taxable years ending after December 31, 1978, and before January 1, 1985.

“(d) RESTRICTION ON CREDITING OF EXEMPT SELF-EMPLOYMENT INCOME.—In any case in which an individual is exempt under this section from paying a tax imposed under section 1401 of the Internal Revenue Code of 1986, any income on which such tax would have been imposed but for such exemption shall not constitute self-employment income under section 211(b) of the Social Security Act (42 U.S.C. 411(b)), and, if such individual's primary insurance amount has been determined under section 215 of such Act (42 U.S.C. 415), notwithstanding section 215(f)(1) of such Act, the Secretary of Health and Human Services (prior to March 31, 1995) or the Commissioner of Social Security (after March 30, 1995) shall recompute such primary insurance amount so as to take into account the provisions of this subsection. The recomputation under this subsection shall be effective with respect to benefits for months following approval of the certificate of exemption.”

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

REVOCATION OF EXEMPTION FROM COVERAGE BY
CLERGYMEN; PROCEDURE, APPLICABILITY, ETC.

Section 1704(b) of Pub. L. 99-514 provided that:

“(1) IN GENERAL.—Notwithstanding section 1402(e)(3) of the Internal Revenue Code of 1986, as redesignated by subsection (a)(2)(B) of this section, any exemption which has been received under section 1402(e)(1) of such Code by a duly ordained, commissioned, or licensed minister of a church, a member of a religious order, or a Christian Science practitioner, and which is effective for the taxable year in which this Act is enacted [enacted Oct. 22, 1986], may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed in regulations made

under chapter 2 of subtitle A of such Code), if such application is filed—

“(A) before the applicant becomes entitled to benefits under section 202(a) or 223 of the Social Security Act [42 U.S.C. 402(a), 423] (without regard to section 202(j)(1) or 223(b) of such Act [42 U.S.C. 402(j)(1), 423(b)]), and

“(B) no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's first taxable year beginning after the date of the enactment of this Act [Oct. 22, 1986].

Any such revocation shall be effective (for purposes of chapter 2 of subtitle A of the Internal Revenue Code of 1986 and title II of the Social Security Act [42 U.S.C. 401 et seq.]), as specified in the application, either with respect to the applicant's first taxable year ending on or after the date of the enactment of this Act [Oct. 22, 1986] or with respect to the applicant's first taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed on or after the due date of the Federal income tax return for the applicant's first taxable year ending on or after the date of the enactment of this Act [Oct. 22, 1986] and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1986 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of subtitle A of such Code (notwithstanding paragraph (4) or (5) of section 1402(c) of such Code) but for the exemption under section 1402(e)(1) of such Code.

“(2) EFFECTIVE DATE.—Paragraph (1) of this subsection shall apply with respect to service performed (to the extent specified in such paragraph) in taxable years ending on or after the date of the enactment of this Act [Oct. 22, 1986] and with respect to monthly insurance benefits payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such paragraph) is effective (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).”

Section 316 of Pub. L. 95-216, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) Notwithstanding section 1402(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], any exemption which has been received under section 1402(e)(1) of such Code, by a duly ordained, commissioned, or licensed minister of a church or a Christian Science practitioner, and which is effective for the taxable year in which this Act [Pub. L. 95-216, enacted Dec. 20, 1977] is enacted, may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed in regulations made under chapter 2 of such Code [this chapter]), if such application is filed—

“(1) before the applicant becomes entitled to benefits under section 202(a) or 223 of the Social Security Act [section 402(a) or 423 of Title 42, The Public Health and Welfare] (without regard to section 202(j)(1) or 223(b) of such Act [section 402(j)(1) or 423(b) of Title 42]), and

“(2) no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's first taxable year beginning after the date of the enactment of this Act [Dec. 20, 1977].

Any such revocation shall be effective (for purposes of chapter 2 of the Internal Revenue Code of 1986 [this chapter] and title II of the Social Security Act [section 401 et seq. of Title 42]), as specified in the application, either with respect to the applicant's first taxable year ending on or after the date of the enactment of this Act

[Dec. 20, 1977] or with respect to the applicant's first taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed on or after the due date of the applicant's first taxable year ending on or after the date of the enactment of this Act [Dec. 20, 1977] and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1986 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of such Code [this chapter] (notwithstanding section 1402(c)(4) or (c)(5) of such Code) except for the exemption under section 1402(e)(1) of such Code.

“(b) Subsection (a) shall apply with respect to service performed (to the extent specified in such subsection) in taxable years ending on or after the date of the enactment of this Act [Dec. 20, 1977], and with respect to monthly insurance benefits payable under title II of the Social Security Act [section 401 et seq. of Title 42] on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such subsection) is filed (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).”

ELECTION OF EXEMPTION OF FEES FROM COVERAGES SELF-EMPLOYMENT INCOME

Section 122(c)(2) of Pub. L. 90-248 authorized any individual affected by the amendments made by Pub. L. 90-248 to subsecs. (c)(1), (2)(E) of this section and section 411(c)(1), (2)(E) of Title 42, The Public Health and Welfare, to make an irrevocable election not to have such amendments apply to fees received in 1968 and every year thereafter if he filed, on or before the due date of his income tax return for 1968, with the Secretary of the Treasury, a certificate of election of exemption from such amendments.

TIME FOR CLAIM FOR REFUND OR CREDIT OF OVERPAYMENT; DISALLOWANCE OF INTEREST

Section 501(c) of Pub. L. 90-248 authorized the payment of a refund or credit of any overpayment resulting from the amendment of subsec. (h)(2), relating to the filing of applications under this section, by section 501(a) of Pub. L. 90-248 if the claim therefore was filed on or before Dec. 31, 1968.

REFUND OR CREDIT ON CLAIMS FOR OVERPAYMENT FILED BEFORE APRIL 15, 1966, BY MEMBERS OF RELIGIOUS GROUPS OPPOSED TO INSURANCE

Section 319(f) of Pub. L. 89-97 authorized the payment of a refund or credit of any overpayment resulting from the amendments made to sections 402, 411, and 1402 of this title by Pub. L. 89-97, if the claim therefore is filed on or before Apr. 15, 1966.

COMPUTATION OF INTEREST OR ASSESSMENT OF PENALTIES ON SELF-EMPLOYMENT TAXES PAYABLE BY MINISTERS, MEMBERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTITIONERS

Section 331(b) of Pub. L. 89-97 established, for purposes of computing interest, Apr. 15, 1967, as the due date for the payment, under section 1401 of this title, of taxes due for any taxable year ending before Jan. 1, 1966 solely by reason of the filing of a certificate or supplementary certificate under subsec. (e)(5) of this section,

which was struck out by section 115(b)(2) of Pub. L. 90-248.

COMPUTATION OF INTEREST OR ASSESSMENT OF PENALTIES ON SELF-EMPLOYMENT TAXES PAYABLE BY MINISTERS, MEMBERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTITIONERS

Section 101(d) of Pub. L. 86-778 established, for purposes of computing interest, Apr. 15, 1962, as the due date for the payment, under section 1401 of this title, of taxes due for any taxable year ending before 1959 solely by reason of the filing of a certificate or supplementary certificate under subsec. (e)(3)(B) or (5) of this section.

Section 1(c) of Pub. L. 85-239 established the due date, for purposes of computing interest, for the payment of taxes, where a certificate had been filed under subsec. (e)(3)(A) or (B) of this section after the due date of a return for any taxable year.

REMUNERATION DEEMED NET EARNINGS FROM SELF-EMPLOYMENT AND NOT REMUNERATION FOR EMPLOYMENT

Section 105(c)(2) of Pub. L. 86-778, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Remuneration which is deemed under section 1402(g) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to constitute net earnings from self-employment and not remuneration for employment shall also be deemed, for purposes of title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare], to constitute net earnings from self-employment and not remuneration for employment. If, pursuant to the last sentence of section 1402(g) of the Internal Revenue Code of 1986, an individual is deemed to have become an employee of an organization (or to have become a member of a group) on the first day of a calendar quarter, such individual shall likewise be deemed, for purposes of clause (ii) or (iii) of section 210(a)(8)(B) of the Social Security Act [section 410(a)(18)(B)(ii), (iii) of Title 42], to have become an employee of such organization (or to have become a member of such group) on such day.”

REMUNERATION PAID TO MINISTERS, MEMBERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTITIONERS IN 1955 AND 1956 DEEMED REMUNERATION FOR EMPLOYMENT FOR PURPOSES OF SOCIAL SECURITY BENEFITS

Section 3 of Pub. L. 85-239, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Remuneration which is deemed under section 1402(e)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to constitute remuneration for employment shall also be deemed, notwithstanding sections 210(a)(8)(A) and 211(c) of the Social Security Act [sections 410(a)(8)(A) and 411(c) of Title 42, The Public Health and Welfare], to constitute remuneration for employment (and not net earnings from self-employment) for purposes of title II of such Act [section 401 et seq. of Title 42].” See section 4 of Pub. L. 85-239, set out as an Effective Date of 1957 Amendment note above.

MONTHLY BENEFITS AND LUMP-SUM DEATH PAYMENTS UNDER SOCIAL SECURITY ACT

Section 105(d)(2) of Pub. L. 86-778, set out as an Effective Date of 1960 Amendment note under section 3121 of this title, provided that no monthly benefits under title II of the Social Security Act [section 401 et seq. of Title 42, The Public Health and Welfare], for September 1960 or any prior month shall be payable or increased by reason of the provisions of subsections (b) and (c) of section 105 or the amendments made by such subsections [adding subsec. (g) to this section and enacting notes under this section and section 3121 of this title], and no lump-sum death payment under title II of the Social Security Act shall be payable or increased by reason of such provisions or amendments in the case of any individual who died prior to Sept. 13, 1960.

CROSS REFERENCES

Abatements, credits, and refunds, income tax withheld, see section 6414 of this title.

Applicability of revenue laws, see section 7851 of this title.

Foreign tax-exempt organizations, see section 1443 of this title.

Mitigation of effect of limitations in case of related taxes under different chapters, see section 6521 of this title.

Publicity of returns and lists of taxpayers, see section 6103 of this title.

Tax on nonresident alien individuals, see section 871 of this title.

Tax withheld at source on nonresident aliens and foreign corporations, see section 33 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32, 162, 219, 401, 408, 475, 879, 981, 2032A, 3121, 3127, 6103, 6521, 6654 of this title; title 42 sections 401, 402, 411, 430.

§ 1403. Miscellaneous provisions

(a) Title of chapter

This chapter may be cited as the “Self-Employment Contributions Act of 1954”.

(b) Cross references

(1) For provisions relating to returns, see section 6017.

(2) For provisions relating to collection of taxes in Virgin Islands, Guam, American Samoa, and Puerto Rico, see section 7651.

(Aug. 16, 1954, ch. 736, 68A Stat. 355; Pub. L. 86-778, title I, § 103(m), Sept. 13, 1960, 74 Stat. 938; Pub. L. 89-368, title I, § 102(b)(6), Mar. 15, 1966, 80 Stat. 64; Pub. L. 98-369, div. A, title IV, § 412(b)(2), July 18, 1984, 98 Stat. 792.)

AMENDMENTS

1984—Subsec. (b)(3). Pub. L. 98-369 struck out par. (3) referring to section 6015 for provisions relating to declarations of estimated tax on self-employment income.

1966—Subsec. (b)(3). Pub. L. 89-368 added par. (3).

1960—Subsec. (b)(2). Pub. L. 86-778 included Guam and American Samoa.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-368 applicable with respect to taxable years beginning after December 31, 1966, see section 102(d) of Pub. L. 89-368, set out as a note under section 6654 of this title.

CHAPTER 3—WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Subchapter	Sec. ¹
A. Nonresident aliens and foreign corporations	1441
B. Application of withholding provisions ..	1461

AMENDMENTS

1984—Pub. L. 98-369, div. A, title IV, § 474(r)(29)(B), (C), July 18, 1984, 98 Stat. 844, struck out “AND TAX-FREE COVENANT BONDS” after “FOREIGN CORPORATIONS” in heading of chapter 3, and struck out item for subchapter B “Tax-free covenant bonds” and redesignated the item for subchapter C as B.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 864, 896, 6414, 6501, 6513, 6724, 7851 of this title.

¹ Section numbers editorially supplied.

Subchapter A—Nonresident Aliens and Foreign Corporations

Sec.	
1441.	Withholding of tax on nonresident aliens.
1442.	Withholding of tax on foreign corporations.
1443.	Foreign tax-exempt organizations.
1444.	Withholding on Virgin Islands source income.
1445.	Withholding of tax on dispositions of United States real property interests.
1446.	Withholding of tax on foreign partners' share of effectively connected income.

AMENDMENTS

1988—Pub. L. 100-647, title I, § 1012(s)(1)(C), Nov. 10, 1988, 102 Stat. 3527, substituted “Withholding of tax on foreign partners' share of effectively connected income” for “Withholding tax on amounts paid by partnerships to foreign partners” in item 1446.

1986—Pub. L. 99-514, title XII, § 1246(c), Oct. 22, 1986, 100 Stat. 2582, added item 1446.

1984—Pub. L. 98-369, div. A, title I, § 129(a)(2), July 18, 1984, 98 Stat. 659, added item 1445.

1983—Pub. L. 97-455, § 1(d)(2), Jan. 12, 1983, 96 Stat. 2498, added item 1444.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 33, 3405, 6049 of this title.

§ 1441. Withholding of tax on nonresident aliens

(a) General rule

Except as otherwise provided in subsection (c), all persons, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States) having the control, receipt, custody, disposal, or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), of any nonresident alien individual or of any foreign partnership shall (except as otherwise provided in regulations prescribed by the Secretary under section 874) deduct and withhold from such items a tax equal to 30 percent thereof, except that in the case of any item of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item.

(b) Income items

The items of income referred to in subsection (a) are interest (other than original issue discount as defined in section 1273), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, gains described in section 631(b) or (c), amounts subject to tax under section 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966. The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act and which are—

- (1) incident to a qualified scholarship to which section 117(a) applies, but only to the extent includible in gross income; or

(2) in the case of an individual who is not a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii), granted by—

(A) an organization described in section 501(c)(3) which is exempt from tax under section 501(a),

(B) a foreign government,

(C) an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961, or

(D) the United States, or an instrumentality or agency thereof, or a State, or a possession of the United States, or any political subdivision thereof, or the District of Columbia,

as a scholarship or fellowship for study, training, or research in the United States. In the case of a nonresident alien individual who is a member of a domestic partnership, the items of income referred to in subsection (a) shall be treated as referring to items specified in this subsection included in his distributive share of the income of such partnership.

(c) Exceptions

(1) Income connected with United States business

No deduction or withholding under subsection (a) shall be required in the case of any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business within the United States and which is included in the gross income of the recipient under section 871(b)(2) for the taxable year.

(2) Owner unknown

The Secretary may authorize the tax under subsection (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(3) Bonds with extended maturity dates

The deduction and withholding in the case of interest on bonds, mortgages, or deeds of trust or other similar obligations of a corporation, within subsections (a), (b), and (c) of section 1451 (as in effect before its repeal by the Tax Reform Act of 1984) were it not for the fact that the maturity date of such obligations has been extended on or after January 1, 1934, and the liability assumed by the debtor exceeds 27½ percent of the interest, shall not exceed the rate of 27½ percent per annum.

(4) Compensation of certain aliens

Under regulations prescribed by the Secretary, compensation for personal services may be exempted from deduction and withholding under subsection (a).

(5) Special items

In the case of gains described in section 631(b) or (c), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966, the amount required to be deducted and with-

held shall, if the amount of such gain is not known to the withholding agent, be such amount, not exceeding 30 percent of the amount payable, as may be necessary to assure that the tax deducted and withheld shall not be less than 30 percent of such gain.

(6) Per diem of certain aliens

No deduction or withholding under subsection (a) shall be required in the case of amounts of per diem for subsistence paid by the United States Government (directly or by contract) to any nonresident alien individual who is engaged in any program of training in the United States under the Mutual Security Act of 1954, as amended.

(7) Certain annuities received under qualified plans

No deduction or withholding under subsection (a) shall be required in the case of any amount received as an annuity if such amount is, under section 871(f), exempt from the tax imposed by section 871(a).

(8) Original issue discount

The Secretary may prescribe such regulations as may be necessary for the deduction and withholding of the tax on original issue discount subject to tax under section 871(a)(1)(C) including rules for the deduction and withholding of the tax on original issue discount from payments of interest.

(9) Interest income from certain portfolio debt investments

In the case of portfolio interest (within the meaning of section 871(h)), no tax shall be required to be deducted and withheld from such interest unless the person required to deduct and withhold tax from such interest knows, or has reason to know, that such interest is not portfolio interest by reason of section 871(h)(3) or (4).

(10) Exception for certain interest and dividends

No tax shall be required to be deducted and withheld under subsection (a) from any amount described in section 871(i)(2).

(11) Certain gambling winnings

No tax shall be required to be deducted and withheld under subsection (a) from any amount exempt from the tax imposed by section 871(a)(1)(A) by reason of section 871(j).

(d) Exemption of certain foreign partnerships

Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary, subsection (a) shall not apply in the case of a foreign partnership engaged in trade or business within the United States if the Secretary determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed by section 871(a) on the members of such partnership who are nonresident alien individuals will not be jeopardized by the exemption.

(e) Alien resident of Puerto Rico

For purposes of this section, the term “nonresident alien individual” includes an alien resident of Puerto Rico.

(f) Continental shelf areas

For sources of income derived from, or for services performed with respect to, the exploration or exploitation of natural resources on submarine areas adjacent to the territorial waters of the United States, see section 638.

(g) Cross reference

For provision treating 85 percent of social security benefits as subject to withholding under this section, see section 871(a)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 357; Aug. 26, 1954, ch. 937, title V, § 544(f), as added July 18, 1956, ch. 627, § 11(a), 70 Stat. 563; amended Pub. L. 85-141, § 11(b)(1), Aug. 14, 1957, 71 Stat. 365; Pub. L. 85-866, title I, § 40(b), Sept. 2, 1958, 72 Stat. 1638; Pub. L. 87-256, § 110(d), Sept. 21, 1961, 75 Stat. 536; Pub. L. 88-272, title III, § 302(c), Feb. 26, 1964, 78 Stat. 146; Pub. L. 89-809, title I, § 103(h), Nov. 13, 1966, 80 Stat. 1553; Pub. L. 91-172, title V, § 505(b), Dec. 30, 1969, 83 Stat. 634; Pub. L. 92-178, title III, § 313(a), (d), Dec. 10, 1971, 85 Stat. 526, 527; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-21, title I, § 121(c)(2), Apr. 20, 1983, 97 Stat. 82; Pub. L. 98-369, div. A, title I, §§ 42(a)(13), 127(e)(1), title IV, § 474(r)(29)(G), (H), July 18, 1984, 98 Stat. 557, 652, 845; Pub. L. 99-514, title I, § 123(b)(2), title XII, § 1214(c)(3), title XVIII, § 1810(d)(3)(D), Oct. 22, 1986, 100 Stat. 2113, 2542, 2825; Pub. L. 100-647, title I, § 1001(d)(2)(A), title VI, § 6134(a)(2), Nov. 10, 1988, 102 Stat. 3350, 3721; Pub. L. 101-508, title XI, § 11704(a)(14), Nov. 5, 1990, 104 Stat. 1388-518; Pub. L. 102-318, title V, § 521(b)(32), (33), July 3, 1992, 106 Stat. 312; Pub. L. 103-66, title XIII, § 13237(c)(4), Aug. 10, 1993, 107 Stat. 508; Pub. L. 103-296, title III, § 320(a)(1)(B), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 105-34, title XVI, § 1604(g)(3), Aug. 5, 1997, 111 Stat. 1099.)

REFERENCES IN TEXT

Section 101(a)(15) of the Immigration and Nationality Act, as amended, referred to in subsec. (b), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

The Mutual Educational and Cultural Exchange Act of 1961, referred to in subsec. (b)(2)(C), is Pub. L. 87-256, Sept. 21, 1961, 75 Stat. 527, as amended, which is classified principally to chapter 33 (§ 2451 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of Title 22 and Tables.

The Tax Reform Act of 1984, referred to in subsec. (c)(3), is division A [§§ 5 to 1082] of Pub. L. 98-369, July 18, 1984, 98 Stat. 494, which was approved July 18, 1984. For complete classification of this Act to the Code, see Short Title of 1984 Amendments note set out under section 1 of this title and Tables.

The Mutual Security Act of 1954, referred to in subsec. (c)(6), is act Aug. 26, 1954, ch. 937, 68 Stat. 832, as amended by acts July 8, 1955, ch. 301, 69 Stat. 283; July 18, 1956, ch. 627, §§ 2 to 11, 70 Stat. 555; Aug. 14, 1957, Pub. L. 85-141, 71 Stat. 355; June 30, 1958, Pub. L. 85-477, ch. 1, §§ 101 to 103, ch. II, §§ 201 to 205, ch. III, § 301, ch. IV, § 401, ch. V, § 501, 72 Stat. 261; July 24, 1959, Pub. L. 86-108, § 2, ch. I, § 101, ch. II, §§ 201 to 205(a) to (i), (k) to (n), ch. III, § 301, ch. IV, § 401(a) to (k), (m), 73 Stat. 246; May 14, 1960, Pub. L. 86-472, ch. I to V, 74 Stat. 134, which was principally classified to chapter 24 (§ 1750 et seq.) of Title 22, Foreign Relations and Intercourse, and which was repealed by act July 18, 1956, ch. 627, § 8(m), 70 Stat. 559, Pub. L. 85-141, §§ 2(e), 3, 4(b), 11(d), Aug. 14, 1957, 71 Stat. 356, Pub. L. 86-108, ch. II, §§ 205(j), ch. IV, 401(i), July 24, 1959, 73 Stat. 250, Pub. L. 86-472, ch. II, §§ 203(d), 204(k), May 14, 1960, 74 Stat. 138, Pub. L. 87-195, pt. III, § 642(a)(2), Sept. 4, 1961, 75 Stat. 460, Pub. L.

94-329, title II, § 212(b)(1), June 30, 1976, 90 Stat. 745, except for sections 1754, 1783, 1796, 1853, 1922, 1928, and 1937 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 1754 of Title 22 and Tables.

AMENDMENTS

1997—Subsec. (g). Pub. L. 105-34 substituted “85 percent” for “one-half”.

1994—Subsec. (b). Pub. L. 103-296 substituted “(J), (M), or (Q)” for “(J), or (M)”.

1993—Subsec. (c)(9). Pub. L. 103-66 substituted “section 871(h)(3) or (4)” for “section 871(h)(3)”.

1992—Subsecs. (b), (c)(5). Pub. L. 102-318 struck out “402(a)(2), 403(a)(2), or” before “631(b)”.

1990—Subsec. (b)(2). Pub. L. 101-508 inserted “section” before “170(b)(1)(A)(ii)”.

1988—Subsec. (b). Pub. L. 100-647, § 1001(d)(2)(A), amended second sentence generally. Prior to amendment, second sentence read as follows: “The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act and which are incident to a qualified scholarship to which section 117(a) applies, but only to the extent such amounts are includible in gross income.”

Subsec. (c)(11). Pub. L. 100-647, § 6134(a)(2), added par. (11).

1986—Subsec. (b). Pub. L. 99-514, § 123(b)(2), amended second sentence generally. Prior to amendment, second sentence read as follows: “The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are—

“(1) that portion of any scholarship or fellowship grant which is received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is not excluded from gross income under section 117(a)(1) solely by reason of section 117(b)(2)(B); and

“(2) amounts described in subparagraphs (A), (B), (C), and (D) of section 117(a)(2) which are received by any such nonresident alien individual and which are incident to a scholarship or fellowship grant to which section 117(a)(1) applies, but only to the extent such amounts are includable in gross income.”

Subsec. (c)(9). Pub. L. 99-514, § 1810(d)(3)(D), substituted “section 871(h)” for “871(h)(2)”.

Subsec. (c)(10). Pub. L. 99-514, § 1214(c)(3), added par. (10).

1984—Subsec. (a). Pub. L. 98-369, § 474(r)(29)(G), struck out “except in the cases provided for in section 1451 and” before “except as otherwise provided in regulations”.

Subsec. (b). Pub. L. 98-369, § 42(a)(13), substituted “section 1273” for “section 1232(b)”.

Subsec. (c)(3). Pub. L. 98-369, § 474(r)(29)(H), inserted “(as in effect before its repeal by the Tax Reform Act of 1984)”.

Subsec. (c)(9). Pub. L. 98-369, § 127(e)(1), added par. (9).

1983—Subsec. (g). Pub. L. 98-21 added subsec. (g).

1976—Pub. L. 94-455 struck out in subsecs. (a), (c)(2), (4), (8), (d), “or his delegate” after “Secretary”.

1971—Subsec. (b). Pub. L. 92-178, § 313(a), inserted “(other than original issue discount as defined in section 1232(b))” after “interest”.

Subsec. (c)(8). Pub. L. 92-178, § 313(d), added par. (8).

1969—Subsec. (f). Pub. L. 91-172 added subsec. (f).

1966—Subsec. (a). Pub. L. 89-809, § 103(h)(1), substituted “or of any foreign partnership” for “, or of any partnership not engaged in trade or business within the United States and composed in whole or in part of non-resident aliens.”

Subsec. (b). Pub. L. 89-809, § 103(h)(2)-(4), struck out “(except interest on deposits with persons carrying on the banking business paid to persons not engaged in

business in the United States)" after "The items of income referred to in subsection (a) are interest" and substituted "gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), amounts subject to tax under section 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966" for "and amounts described in section 402(a)(2), section 403(a)(2), section 631(b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets" in text preceding par. (1), and inserted provision for treatment of items of income referred to in subsec. (a) in the case of nonresident alien individuals who are members of domestic partnerships.

Subsec. (c)(1). Pub. L. 89-809, §103(h)(5), substituted "in the case of any item of income (other than compensation for personal services) which is effectively connected with the conduct of a trade or business within the United States and which is included in the gross income of the recipient under section 871(b)(2) for the taxable year" for "in the case of dividends paid by a foreign corporation unless (A) such corporation is engaged in trade or business within the United States, and (B) more than 85 percent of the gross income of such corporation for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under part I of subchapter N of chapter 1" after "shall be required".

Subsec. (c)(4). Pub. L. 89-809, §103(h)(6), struck out provisions which had served to limit to compensation for personal services of nonresident alien individuals who enter and leave the United States at frequent intervals and of nonresident alien individuals for the period they are temporarily present in the United States as a nonimmigrant under subparagraph (F) and (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, the application of the exemption from deduction and withholding under subsec. (a), leaving the exemption under subsec. (a) applicable to compensation for personal services without further limitation.

Subsec. (c)(5). Pub. L. 89-809, §103(h)(7), substituted "gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), gains subject to tax under section 871 (a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966," for "amounts described in section 402(a)(2), section 403(a)(2), section 631(b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets," and "amounts payable," for "proceeds from such sale or exchange."

Subsec. (c)(7). Pub. L. 89-809, §103(h)(8), added par. (7). Subsecs. (d), (e). Pub. L. 89-809, §103(h)(9), added subsec. (d) and redesignated former subsec. (d) as (e).

1964—Subsecs. (a), (b). Pub. L. 88-272 reduced the withholding rate from 18% to 14%.

1961—Subsec. (a). Pub. L. 87-256, §110(d)(1), required a tax equal to 18 percent of the item in the case of any item of income specified in second sentence of subsection (b).

Subsec. (b). Pub. L. 87-256, §110(d)(2), inserted provisions listing items of income from which tax shall be deducted and withheld at the rate of 18 percent.

Subsec. (c)(4). Pub. L. 87-256, §110(d)(3), authorized the exemption from deduction and withholding of the compensation for personal services of a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subpar. (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended.

1958—Subsecs. (b), (c)(5). Pub. L. 85-866 inserted "section 403(a)(2)," after "section 402(a)(2)."

1956—Subsec. (c)(6). Act July 18, 1956, added section 544(f) to act Aug. 26, 1954, which section amended this subsection by adding par. (6).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of

Pub. L. 103-296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to interest received after Dec. 31, 1993, see section 13237(d) of Pub. L. 103-66, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(A) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 123(b)(2) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1214(c)(3) of Pub. L. 99-514 applicable to payments made in a taxable year of the payor beginning after Dec. 31, 1986, except as otherwise provided, see section 1214(d) of Pub. L. 99-514, as amended, set out as a note under section 861 of this title.

Amendment by section 1810(d)(3)(D) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(13) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 127(e)(1) of Pub. L. 98-369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years ending after such date, see section 127(g)(1) of Pub. L. 98-369, set out as a note under section 871 of this title.

Amendment by section 474(r)(29)(G), (H) of Pub. L. 98-369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98-369, set out as a note under section 33 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98-21, set out as an Effective Date note under section 86 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-178 applicable with respect to payments occurring on or after Apr. 1, 1972, see section 313(f) of Pub. L. 92-178, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to payments made in taxable years of recipients beginning after Dec. 31, 1966, see section 103(n)(2) of Pub. L. 89-809, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to payments made after seventh day following Feb. 24, 1964, see sec-

tion 302(d) of Pub. L. 88-272, set out as a note under section 3402 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 110(h)(2) of Pub. L. 87-256 provided that: “The amendments made by subsection (d) of this section [amending this section] shall apply with respect to payments made after December 31, 1961.”

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 effective Sept. 3, 1958, see section 40(c) of Pub. L. 85-866, set out as a note under section 871 of this title.

REPEALS

Section 544(f) of act Aug. 26, 1954, cited as a credit to this section, was repealed by Pub. L. 85-141, except insofar as such section 544(f) affected this section.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 123(b)(2) and 1214(c)(3) of Pub. L. 99-514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Pub. L. 97-248, title III, §342, Sept. 3, 1982, 96 Stat. 635, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Not later than 2 years after the date of the enactment of this Act [Sept. 3, 1982], the Secretary of the Treasury or his delegate shall prescribe regulations establishing certification procedures, refund procedures, or other procedures which ensure that any benefit of any treaty relating to withholding of tax under sections 1441 and 1442 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] is available only to persons entitled to such benefit.”

CROSS REFERENCES

Consent dividends, see section 565 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 565, 860G, 871, 884, 1276, 1278, 1442, 1444, 3402, 6049, 6103, 7701 of this title; title 12 section 3413; title 25 section 2719.

§ 1442. Withholding of tax on foreign corporations

(a) General rule

In the case of foreign corporations subject to taxation under this subtitle, there shall be deducted and withheld at the source in the same manner and on the same items of income as is provided in section 1441 a tax equal to 30 percent thereof. For purposes of the preceding sentence, the references in section 1441(b) to sections 871(a)(1)(C) and (D) shall be treated as referring to sections 881(a)(3) and (4), the reference in section 1441(c)(1) to section 871(b)(2) shall be treated as referring to section 842 or section 882(a)(2), as the case may be, the reference in section 1441(c)(5) to section 871(a)(1)(D) shall be treated as referring to section 881(a)(4), the reference in section 1441(c)(8) to section 871(a)(1)(C) shall be treated as referring to section 881(a)(3), the references in section 1441(c)(9) to sections 871(h) and 871(h)(3) or (4) shall be treated as referring to sections 881(c) and 881(c)(3) or (4), and the reference in section 1441(c)(10) to section 871(i)(2) shall be treated as referring to section 881(d).

(b) Exemption

Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary, subsection (a) shall not apply in the case of a foreign corporation engaged in trade or business within the United States if the Secretary determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed by section 881 on such corporation will not be jeopardized by the exemption.

(c) Exception for certain possessions corporations

For purposes of this section, the term “foreign corporation” does not include a corporation created or organized in Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands or under the law of any such possession if the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met with respect to such corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 358; Pub. L. 89-809, title I, §104(c), Nov. 13, 1966, 80 Stat. 1557; Pub. L. 92-178, title III, §313(e), Dec. 10, 1971, 85 Stat. 528; Pub. L. 92-606, §1(e)(2), Oct. 31, 1972, 86 Stat. 1497; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title I, §§127(e)(2), 130(b), title IV, §474(r)(29)(I), July 18, 1984, 98 Stat. 652, 661, 845; Pub. L. 99-514, title XII, §1273(b)(2)(B), title XVIII, §1810(d)(3)(E), Oct. 22, 1986, 100 Stat. 2596, 2825; Pub. L. 100-647, title I, §1012(g)(7), Nov. 10, 1988, 102 Stat. 3501; Pub. L. 103-66, title XIII, §13237(c)(5), Aug. 10, 1993, 107 Stat. 508.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-66 substituted “871(h)(3) or (4)” for “871(h)(3)” and “881(c)(3) or (4)” for “881(c)(3)”.

1988—Subsec. (a). Pub. L. 100-647 struck out “and” after “to section 881(a)(3),” and inserted before period at end “, and the reference in section 1441(c)(10) to section 871(i)(2) shall be treated as referring to section 881(d)”.

1986—Subsec. (a). Pub. L. 99-514, §1810(d)(3)(E), substituted “871(h)” for “871(h)(2)”, “881(c)” for “881(c)(2)”, and “1441(c)(9)” for “1449(c)(9)”.

Subsec. (c). Pub. L. 99-514, §1273(b)(2)(B), amended subsec. (c) generally, substituting reference to “certain possessions corporations” for reference to “certain Guam and Virgin Islands corporations” in heading, and in text extending “foreign corporation” exception so as to not include corporation created or organized in Guam, American Samoa, Northern Mariana Islands, or the Virgin Islands, and striking out par. (2) which declared that par. (1) not apply to tax imposed in Guam, and par. (3) which referred to sections 934 and 943a for tax imposed in Virgin Islands.

1984—Subsec. (a). Pub. L. 98-369, §474(r)(29)(I), struck out “or section 1451” after “provided in section 1441” and struck out “; except that, in the case of interest described in section 1451 (relating to tax-free covenant bonds), the deduction and withholding shall be at the rate specified therein” after “a tax equal to 30 percent thereof”.

Pub. L. 98-369, §127(e)(2), struck out “and” after “section 881(a)(4),” and inserted “, and the references in section 1449(c)(9) to sections 871(h)(2) and 871(h)(3) shall be treated as referring to sections 881(c)(2) and 881(c)(3)”.

Subsec. (c). Pub. L. 98-369, §130(b), substituted provision relating to exception for certain Guam and Virgin Islands corporations for provision relating to exception for Guam corporations.

1976—Subsec. (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary” in two places.

1972—Subsec. (c). Pub. L. 92-606 added subsec. (c).

1971—Subsec. (a). Pub. L. 92-178 provided that reference in section 1441(c)(8) to section 871(a)(1)(C) shall be treated as referring to section 881(a)(3).

1966—Pub. L. 89-809 limited the withholding of tax at the 30 percent rate to items of fixed or determinable United States source income not effectively connected with the conduct of a trade or business in the United States and authorized the granting of an exemption from the withholding requirement in the case of a foreign corporation engaged in trade or business within the United States if the Secretary or his delegate determines that the withholding imposes an undue administrative burden and that the collection of the tax will not be jeopardized by the exemption.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to interest received after Dec. 31, 1993, see section 13237(d) of Pub. L. 103-66, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1273(b)(2)(B) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99-514, set out as a note under section 931 of this title.

Amendment by section 1810(d)(3)(E) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 127(e)(2) of Pub. L. 98-369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years after such date, see section 127(g)(1) of Pub. L. 98-369, set out as a note under section 871 of this title.

Amendment by section 130(b) of Pub. L. 98-369 applicable to payments made after Mar. 1, 1984, in taxable

years ending after such date, see section 130(d) of Pub. L. 98-369, set out as a note under section 881 of this title.

Amendment by section 474(r)(29)(I) of Pub. L. 98-369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98-369, set out as a note under section 33 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 2 of Pub. L. 92-606 provided in part that: “The amendment made by section 1(e)(2) [amending this section] shall take effect on the day after the date of enactment of this Act [Oct. 31, 1972].”

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-178 applicable with respect to payments occurring on or after Apr. 1, 1972, see section 313(f) of Pub. L. 92-178, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

For provisions relating to withholding of tax on non-resident aliens and foreign corporations, see Pub. L. 97-248, title III, §342, Sept. 3, 1982, 96 Stat. 635, set out as a note under section 1441 of this title.

CROSS REFERENCES

Consent dividends, see section 565 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12, 565, 814, 860G, 881, 884, 885, 1276, 1278, 1444, 3402, 7701 of this title.

§ 1443. Foreign tax-exempt organizations

(a) Income subject to section 511

In the case of income of a foreign organization subject to the tax imposed by section 511, this chapter shall apply to income includible under section 512 in computing its unrelated business taxable income, but only to the extent and subject to such conditions as may be provided under regulations prescribed by the Secretary.

(b) Income subject to section 4948

In the case of income of a foreign organization subject to the tax imposed by section 4948(a), this chapter shall apply, except that the deduction and withholding shall be at the rate of 4 percent and shall be subject to such conditions as may be provided under regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 358; Pub. L. 91-172, title I, §101(j)(22), 121(d)(2)(C), Dec. 30, 1969, 83 Stat. 528, 547; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” in two places.

1969—Pub. L. 91-172, §101(j)(22), designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (a), Pub. L. 91-172, §121(d)(2)(C), substituted “income” for “rents” after “this chapter shall apply to”.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(22) of Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 121(d)(2)(C) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91-172, set out as a note under section 511 of this title.

CROSS REFERENCES

Credits against tax, see section 33 of this title.
Itemized deductions, see section 164 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7701 of this title.

§ 1444. Withholding on Virgin Islands source income

For purposes of determining the withholding tax liability incurred in the Virgin Islands pursuant to this title (as made applicable to the Virgin Islands) with respect to amounts received from sources within the Virgin Islands by citizens and resident alien individuals of the United States, and corporations organized in the United States, the rate of withholding tax under sections 1441 and 1442 on income subject to tax under section 871(a)(1) or 881 shall not exceed the rate of tax on such income under section 871(a)(1) or 881, as the case may be.

(Added Pub. L. 97-455, §1(b), Jan. 12, 1983, 96 Stat. 2497; amended Pub. L. 100-647, title I, §1012(x), Nov. 10, 1988, 102 Stat. 3530.)

AMENDMENTS

1988—Pub. L. 100-647 struck out “(as modified by section 934A)” before “shall not exceed”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to payments made after Jan. 12, 1983, see section 1(e)(2) of Pub. L. 97-455, set out as a note under section 934 of this title.

§ 1445. Withholding of tax on dispositions of United States real property interests

(a) General rule

Except as otherwise provided in this section, in the case of any disposition of a United States real property interest (as defined in section 897(c)) by a foreign person, the transferee shall be required to deduct and withhold a tax equal to 10 percent of the amount realized on the disposition.

(b) Exemptions

(1) In general

No person shall be required to deduct and withhold any amount under subsection (a)

with respect to a disposition if paragraph (2), (3), (4), (5), or (6) applies to the transaction.

(2) Transferor furnishes nonforeign affidavit

Except as provided in paragraph (7), this paragraph applies to the disposition if the transferor furnishes to the transferee an affidavit by the transferor stating, under penalty of perjury, the transferor's United States taxpayer identification number and that the transferor is not a foreign person.

(3) Nonpublicly traded domestic corporation furnishes affidavit that interests in corporation not United States real property interests

Except as provided in paragraph (7), this paragraph applies in the case of a disposition of any interest in any domestic corporation if the domestic corporation furnishes to the transferee an affidavit by the domestic corporation stating, under penalty of perjury, that—

(A) the domestic corporation is not and has not been a United States real property holding corporation (as defined in section 897(c)(2)) during the applicable period specified in section 897(c)(1)(A)(ii), or

(B) as of the date of the disposition, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B).

(4) Transferee receives qualifying statement

(A) In general

This paragraph applies to the disposition if the transferee receives a qualifying statement at such time, in such manner, and subject to such terms and conditions as the Secretary may by regulations prescribe.

(B) Qualifying statement

For purposes of subparagraph (A), the term “qualifying statement” means a statement by the Secretary that—

(i) the transferor either—

(I) has reached agreement with the Secretary (or such agreement has been reached by the transferee) for the payment of any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recognized by the transferor on the disposition of the United States real property interest, or

(II) is exempt from any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recognized by the transferor on the disposition of the United States real property interest, and

(ii) the transferor or transferee has satisfied any transferor's unsatisfied withholding liability or has provided adequate security to cover such liability.

(5) Residence where amount realized does not exceed \$300,000

This paragraph applies to the disposition if—

(A) the property is acquired by the transferee for use by him as a residence, and

(B) the amount realized for the property does not exceed \$300,000.

(6) Stock regularly traded on established securities market

This paragraph applies if the disposition is of a share of a class of stock that is regularly traded on an established securities market.

(7) Special rules for paragraphs (2) and (3)

Paragraph (2) or (3) (as the case may be) shall not apply to any disposition—

(A) if—

(i) the transferee has actual knowledge that the affidavit referred to in such paragraph is false, or

(ii) the transferee receives a notice (as described in subsection (d)) from a transferor's agent or a transferee's agent that such affidavit is false, or

(B) if the Secretary by regulations requires the transferee to furnish a copy of such affidavit to the Secretary and the transferee fails to furnish a copy of such affidavit to the Secretary at such time and in such manner as required by such regulations.

(c) Limitations on amount required to be withheld

(1) Cannot exceed transferor's maximum tax liability

(A) In general

The amount required to be withheld under this section with respect to any disposition shall not exceed the amount (if any) determined under subparagraph (B) as the transferor's maximum tax liability.

(B) Request

At the request of the transferor or transferee, the Secretary shall determine, with respect to any disposition, the transferor's maximum tax liability.

(C) Refund of excess amounts withheld

Subject to such terms and conditions as the Secretary may by regulations prescribe, a transferor may seek and obtain a refund of any amounts withheld under this section in excess of the transferor's maximum tax liability.

(2) Authority of Secretary to prescribe reduced amount

At the request of the transferor or transferee, the Secretary may prescribe a reduced amount to be withheld under this section if the Secretary determines that to substitute such reduced amount will not jeopardize the collection of the tax imposed by section 871(b)(1) or 882(a)(1).

(3) Procedural rules

(A) Regulations

Requests for—

(i) qualifying statements under subsection (b)(4),

(ii) determinations of transferor's maximum tax liability under paragraph (1), and

(iii) reductions under paragraph (2) in the amount required to be withheld,

shall be made at the time and manner, and shall include such information, as the Secretary shall prescribe by regulations.

(B) Requests to be handled within 90 days

The Secretary shall take action with respect to any request described in subparagraph (A) within 90 days after the Secretary receives the request.

(d) Liability of transferor's agents or transferee's agents

(1) Notice of false affidavit; foreign corporations

If—

(A) the transferor furnishes the transferee an affidavit described in paragraph (2) of subsection (b) or a domestic corporation furnishes the transferee an affidavit described in paragraph (3) of subsection (b), and

(B) in the case of—

(i) any transferor's agent—

(I) such agent has actual knowledge that such affidavit is false, or

(II) in the case of an affidavit described in subsection (b)(2) furnished by a corporation, such corporation is a foreign corporation, or

(ii) any transferee's agent, such agent has actual knowledge that such affidavit is false,

such agent shall so notify the transferee at such time and in such manner as the Secretary shall require by regulations.

(2) Failure to furnish notice

(A) In general

If any transferor's agent or transferee's agent is required by paragraph (1) to furnish notice, but fails to furnish such notice at such time or times and in such manner as may be required by regulations, such agent shall have the same duty to deduct and withhold that the transferee would have had if such agent had complied with paragraph (1).

(B) Liability limited to amount of compensation

An agent's liability under subparagraph (A) shall be limited to the amount of compensation the agent derives from the transaction.

(3) Transferor's agent

For purposes of this subsection, the term "transferor's agent" means any person who represents the transferor—

(A) in any negotiation with the transferee or any transferee's agent related to the transaction, or

(B) in settling the transaction.

(4) Transferee's agent

For purposes of this subsection, the term "transferee's agent" means any person who represents the transferee—

(A) in any negotiation with the transferor or any transferor's agent related to the transaction, or

(B) in settling the transaction.

(5) Settlement officer not treated as transferor's agent

For purposes of this subsection, a person shall not be treated as a transferor's agent or

transferee's agent with respect to any transaction merely because such person performs 1 or more of the following acts:

(A) The receipt and the disbursement of any portion of the consideration for the transaction.

(B) The recording of any document in connection with the transaction.

(e) Special rules relating to distributions, etc., by corporations, partnerships, trusts, or estates

(1) Certain domestic partnerships, trusts, and estates

In the case of any disposition of a United States real property interest as defined in section 897(c) (other than a disposition described in paragraph (4) or (5)) by a domestic partnership, domestic trust, or domestic estate, such partnership, the trustee of such trust, or the executor of such estate (as the case may be) shall be required to deduct and withhold under subsection (a) a tax equal to 35 percent (or, to the extent provided in regulations, 20 percent) of the gain realized to the extent such gain—

(A) is allocable to a foreign person who is a partner or beneficiary of such partnership, trust, or estate, or

(B) is allocable to a portion of the trust treated as owned by a foreign person under subpart E of part I of subchapter J.

(2) Certain distributions by foreign corporations

In the case of any distribution by a foreign corporation on which gain is recognized under subsection (d) or (e) of section 897, the foreign corporation shall deduct and withhold under subsection (a) a tax equal to 35 percent of the amount of gain recognized on such distribution under such subsection.

(3) Distributions by certain domestic corporations to foreign shareholders

If a domestic corporation which is or has been a United States real property holding corporation (as defined in section 897(c)(2)) during the applicable period specified in section 897(c)(1)(A)(ii) distributes property to a foreign person in a transaction to which section 302 or part II of subchapter C applies, such corporation shall deduct and withhold under subsection (a) a tax equal to 10 percent of the amount realized by the foreign shareholder. The preceding sentence shall not apply if, as of the date of the distribution, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B). Rules similar to the rules of the preceding provisions of this paragraph shall apply in the case of any distribution to which section 301 applies and which is not made out of the earnings and profits of such a domestic corporation.

(4) Taxable distributions by domestic or foreign partnerships, trusts, or estates

A domestic or foreign partnership, the trustee of a domestic or foreign trust, or the executor of a domestic or foreign estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of the fair market value (as of the time of the taxable

distribution) of any United States real property interest distributed to a partner of the partnership or a beneficiary of the trust or estate, as the case may be, who is a foreign person in a transaction which would constitute a taxable distribution under the regulations promulgated by the Secretary pursuant to section 897.

(5) Rules relating to dispositions of interest in partnerships, trusts, or estates

To the extent provided in regulations, the transferee of a partnership interest or of a beneficial interest in a trust or estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of the amount realized on the disposition.

(6) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations providing for exceptions from provisions of this subsection and regulations for the application of this subsection in the case of payments through 1 or more entities.

(f) Definitions

For purposes of this section—

(1) Transferor

The term “transferor” means the person disposing of the United States real property interest.

(2) Transferee

The term “transferee” means the person acquiring the United States real property interest.

(3) Foreign person

The term “foreign person” means any person other than a United States person.

(4) Transferor's maximum tax liability

The term “transferor's maximum tax liability” means, with respect to the disposition of any interest, the sum of—

(A) the maximum amount which the Secretary determines could be imposed as tax under section 871(b)(1) or 882(a)(1) by reason of the disposition, plus

(B) the amount the Secretary determines to be the transferor's unsatisfied withholding liability with respect to such interest.

(5) Transferor's unsatisfied withholding liability

The term “transferor's unsatisfied withholding liability” means the withholding obligation imposed by this section on the transferor's acquisition of the United States real property interest or on the acquisition of a predecessor interest, to the extent such obligation has not been satisfied.

(Added Pub. L. 98-369, div. A, title I, §129(a)(1), July 18, 1984, 98 Stat. 655; amended Pub. L. 99-514, title III, §311(b)(4), title XVIII, §1810(f)(2)-(4)(A), (5), (6), (8), Oct. 22, 1986, 100 Stat. 2219, 2827, 2828; Pub. L. 100-647, title I, §1003(b)(3), Nov. 10, 1988, 102 Stat. 3384; Pub. L. 103-66, title XIII, §13221(c)(3), Aug. 10, 1993, 107 Stat. 477; Pub. L. 104-188, title I, §1704(c)(1), Aug.

20, 1996, 110 Stat. 1878; Pub. L. 105-34, title III, §311(c)(1), Aug. 5, 1997, 111 Stat. 835.)

AMENDMENTS

1997—Subsec. (e)(1). Pub. L. 105-34 substituted “20 percent” for “28 percent” in introductory provisions.

1996—Subsec. (e)(3). Pub. L. 104-188 inserted at end “Rules similar to the rules of the preceding provisions of this paragraph shall apply in the case of any distribution to which section 301 applies and which is not made out of the earnings and profits of such a domestic corporation.”

1993—Subsec. (e)(1), (2). Pub. L. 103-66 substituted “35 percent” for “34 percent”.

1988—Subsec. (e)(1). Pub. L. 100-647 inserted “(or, to the extent provided in regulations, 28 percent)” after “to 34 percent”.

1986—Subsec. (b)(3). Pub. L. 99-514, §1810(f)(2), amended par. (3) generally, substituting “interests in corporation not United States real property interests” for “it is not a United States real property holding corporation” in heading, striking out the comma before “if the domestic corporation” in introductory provisions, inserting subpar. (A) designation and adding subpar. (B).

Subsec. (d)(1)(A). Pub. L. 99-514, §1810(f)(3)(B), substituted “paragraph (2)” for “paragraph (2)(A)”.

Subsec. (d)(1)(B)(i). Pub. L. 99-514, §1810(f)(3)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “any transferor’s agent, the transferor is a foreign corporation or such agent has actual knowledge that such affidavit is false, or”.

Subsec. (e)(1). Pub. L. 99-514, §311(b)(4), substituted “34 percent” for “28 percent”.

Pub. L. 99-514, §1810(f)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “A domestic partnership, the trustee of a domestic trust, or the executor of a domestic estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of any amount of which such partnership, trustee, or executor has custody which is—

“(A) attributable to the disposition of a United States real property interest (as defined in section 897(c), other than a disposition described in paragraph (4) or (5)), and

“(B) either—

“(i) includible in the distributive share of a partner of the partnership who is a foreign person,

“(ii) includible in the income of a beneficiary of the trust or estate who is a foreign person, or

“(iii) includible in the income of a foreign person under the provisions of section 671.”

Subsec. (e)(2). Pub. L. 99-514, §311(b)(4), substituted “34 percent” for “28 percent”.

Subsec. (e)(3). Pub. L. 99-514, §1810(f)(5), inserted “The preceding sentence shall not apply if, as of the date of the distribution, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B).”

Subsec. (e)(4). Pub. L. 99-514, §1810(f)(6), substituted “section 897” for “section 897(g)”.

Subsec. (e)(6). Pub. L. 99-514, §1810(f)(8), inserted “and regulations for the application of this subsection in the case of payments through 1 or more entities”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable only to amounts paid after Aug. 5, 1997, see section 311(d)(2) of Pub. L. 105-34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1704(c)(2) of Pub. L. 104-188 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 20, 1996].”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1003(b)(3) of Pub. L. 100-647 provided that the amendment made by that section is effective for taxable years beginning after Dec. 31, 1987.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 311(b)(4) of Pub. L. 99-514 applicable to payments made after Dec. 31, 1986, see section 311(c) of Pub. L. 99-514, as amended, set out as a note under section 1201 of this title.

Amendment by section 1810(f)(2), (3), (5), (6), (8) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Section 1810(f)(4)(B) of Pub. L. 99-514 provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to dispositions after the day 30 days after the date of the enactment of this Act [Oct. 22, 1986].”

EFFECTIVE DATE

Section 129(c)(1) of Pub. L. 98-369 provided that: “The amendment made by subsection (a) [enacting this section] shall apply to any disposition on or after January 1, 1985.”

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 897, 6039C of this title.

§ 1446. Withholding¹ tax on foreign partners’ share of effectively connected income

(a) General rule

If—

(1) a partnership has effectively connected taxable income for any taxable year, and

(2) any portion of such income is allocable under section 704 to a foreign partner,

such partnership shall pay a withholding tax under this section at such time and in such manner as the Secretary shall by regulations prescribe.

(b) Amount of withholding tax

(1) In general

The amount of the withholding tax payable by any partnership under subsection (a) shall be equal to the applicable percentage of the effectively connected taxable income of the partnership which is allocable under section 704 to foreign partners.

(2) Applicable percentage

For purposes of paragraph (1), the term “applicable percentage” means—

(A) the highest rate of tax specified in section 1 in the case of the portion of the effectively connected taxable income which is allocable under section 704 to foreign partners who are not corporations, and

(B) the highest rate of tax specified in section 11(b)(1) in the case of the portion of the effectively connected taxable income which

¹ So in original. Probably should be followed by “of”.